

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ERIC V. MILLER,

Defendant.

8:06CR124

MEMORANDUM AND ORDER

This matter is before the court on the judgment and mandate of the United States Court of Appeals for the Eighth Circuit, [Filing No. 132](#) and [Filing No. 133](#). In his petition, [Filing No. 130](#), the defendant sought relief under *Johnson v. United States*, 135 S. Ct. 2551, 2557 (2015), which invalidated a provision of the Armed Career Criminal Act, 18 U.S.C. § 924(e)(2)(B). *Id.*; see also *Beckles v. United States*, 137 S. Ct. 886, 891 (2017) (finding an enhancement for a violent felony under the Guidelines is not subject to a void-for vagueness challenge).

The Appeals Court denied the defendant's motion for leave to file a successive petition for habeas corpus relief in this court. Accordingly, the court is without jurisdiction to address the § 2255 petition. See, e.g., *United States v. Lee*, 792 F.3d 1021, 1025 (8th Cir.), *as corrected* (Dec. 14, 2015), *cert. denied*, 137 S. Ct. 1577 (2017) (affirming dismissal of successive petition for lack of jurisdiction).

The defendant must make a substantial showing of the denial of a constitutional right in order to be granted a certificate of appealability under 28 U.S.C. § 2253(c)(2). See *Miller-El v. Cockrell*, 537 U.S. 322 (2003). The defendant's motion does not present questions of substance for appellate review and, therefore, does not make the

requisite showing to satisfy § 2253(c). See [28 U.S.C. § 2253\(c\)\(2\)](#); Fed. R. App. P. [22\(b\)](#). Accordingly, no certificate of appealability pursuant to [28 U.S.C. § 2253\(c\)](#) will issue. A judgment in accordance with this Memorandum and Order will issue this date.

IT IS ORDERED:

1. The defendant's successive motion to vacate, set aside, or correct his sentence under § 2255 ([Filing No. 130](#)) is denied for lack of jurisdiction.
2. The defendant's [28 U.S.C. § 2255](#) action is dismissed.
3. No certificate of appealability will issue.

Dated this 17th day of October, 2017.

BY THE COURT:

s/ Joseph F. Bataillon
Senior United States District Judge